IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1287 OF 2007

M/s.Prama Exports ..Petitioners

Versus

Union of India & Ors. ..Respondents

Mr. Vikram Nankani with Mr.M.R. Baya, for the Petitioners
Mr. M.I. Sethna, Senior Counsel with Mr. A.M. Sethna and
Mr. S.D. Bhosale, for the Respondents.

CORAM : F.I. REBELLO &
R.S. MOHITE, JJ.
DATED : 6TH DECEMBER 2007

P.C.

. Rule. Heard forthwith.

. The prayer sought by the petitioner is to quash and set aside the condition endorsed on the licence amendment sheet to the two DFIAs dated 19th June, 2006 (Exhibits I-1 and I-2 hereto) and two letters dated 1st June, 2007 rejecting the application for deletion thereof (Exhibits K-1 and K2 hereto). A mandamus in terms of prayer clause (b) has also been sought.

2. The petitioner was issued Duty Free Import Authorisation pursuant to Chapter IV of Duty Remission Scheme as it then stood. We are concerned with para.4.4.6 of the said scheme. The relevant portion reads as follows:-

"Once export obligation has been fulfilled, request for transferability or Authorisation or inputs

imported against it may be made before concerned RA. Once, transferability is endorsed, Authorisation holder may transfer DFIA or duty free inputs, except fuel and any other item(s) notified by DGFT. However, for fuel, import entitlement may be transferred only to companies which have been granted authorisation to market fuel by Ministry of Petroleum and Natural Gas."

"Wherever SIONs prescribe actual user condition and in case of Acetic Anhydride, Ephedrine and Pseudo Ephedrine, DFIA shall be issued with actual user condition for these inputs and no transferability shall be allowed for these inputs even after fulfilment of export obligation.

Sub para. came to be added by Notification dated 19th April, 2007 with effect from 1st April, 2007 which reads as under:-

"Once transferability is endorsed, imports against authorisation or transfer of imported inputs shall be subject to payment of applicable additional customs duty/excise duty. While endorsing transferability, authorisation would bear a note as to liability of such additional customs duty/excise duty. Such additional customs duty/excise duty would be reimbursed to exporters as drawback. In case of local sales by excisable unit, CENVAT credit would equal excise duty already paid."

During the pendency of the petition a further notification No.49 has been issued dated November 14, 2007. The Notification 2nd sub-para of para.4.4.6 stands replaced by the following:-

> "Once transferability is endorsed, imports/domestic procurement against authorisation or transfer of imported inputs/domestically procured inputs shall be subject to payment of applicable additional customs duty/excise duty. While endorsing transferability, authorisation would bear a note as to liability of such additional customs duty/excise duty. However, in case where CENVAT facility has been availed, exemption from additional customs duty/excise duty would be available even after endorsement of transferability of FDIA."

3. There is no dispute that in so far as the petitioner is concerned, the petitioner has not availed the said facility. In the light of that either the petitioner or his transferee would be entitled to the benefits as contemplated by the license. If there be any procedure to be complied with the petitioner is bound to comply with the said procedure. In the light of that petition made absolute in terms of prayer clauses (a) and (b).

4. Issue as to whether the Notification of 19th April, 2007 is prospective or retrospective is kept open to be considered in appropriate proceedings.

(R.S.MOHITE, J.) **(F.I. REBELLO, J)**